

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
LAS VEGAS, NEVADA

CUNG LE, et al., )  
 ) CASE No. 2:15-CV-1045-RFB-PAL  
Plaintiffs, )  
 )  
vs. )  
 )  
ZUFFA, LLC, et al., )  
 )  
Defendants. ) Las Vegas, Nevada  
 ) December 8, 2015  
 ) 1:48:39 p.m.  
And related parties and cases)

**HEARING ON MOTIONS**

THE HONORABLE PEGGY A. LEEN, PRESIDING  
MAGISTRATE JUDGE OF THE U.S. DISTRICT COURT

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2:15-CV-1045-RFB-PAL	Le v. Zuffa	12/08/15	Status Conference
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Le v. Zuffa

12/08/15

Status  
Conference

1 LAS VEGAS, NEVADA

TUESDAY, DECEMBER 8, 2015

2 PROCEEDINGS BEGAN AT 1:48:39 P.M.

3 \* \* \* \* \*

4 THE COURT: Good afternoon. Please be seated.

5 THE CLERK: Your Honor, we are calling the status  
6 conference in the matter of Le versus Zuffa, LLC. The case  
7 number is 2:15-CV-1045-RFB-PAL.

8 Beginning with plaintiff's counsel, counsel, please  
9 state your names for the record.

10 MR. DELL'ANGELO: Michael Dell'Angelo from the law  
11 firm of Berger & Montague on behalf of the plaintiffs.

12 MR. MADDEN: Patrick Madden from the law firm of  
13 Berger & Montague on behalf of plaintiffs.

14 MR. SPRINGMEYER: Don Springmeyer from Wolf Rifkin  
15 for plaintiffs.

16 MR. WILLIAMS: Good afternoon, Your Honor. Colby  
17 Williams, Campbell & Williams on behalf of the defendant,  
18 Zuffa, LLC.

19 MR. COVE: Morning, Your Honor. John Cove from  
20 Bois Schiller & Flexner on behalf of Zuffa, LLC.

21 MS. LYNCH: Marcy Lynch from Bois Schiller &  
22 Flexner on behalf of Zuffa, LLC.

23 MR. HENDRICK: Good afternoon, Your Honor. Kirk  
24 Hendrick, Chief Legal Officer for Zuffa, LLC, UFC here in Las  
25 Vegas.

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1 THE COURT: This is the time set for a status and  
2 dispute resolution conference. I have reviewed your joint  
3 status report. Before we address the areas of impasse for  
4 which you need judicial resolution, are there any preliminary  
5 matters that should be addressed?

6 ATTORNEYS: [No audible response].

7 THE COURT: Hearing none. Let's start with the --

8 MR. WILLIAMS: Oh, Your Honor, actually I think  
9 there are -- there is one at least.

10 THE COURT: Yes, Mr. Williams.

11 MR. WILLIAMS: And that has to do with the issue  
12 of custodians, and I'm setting aside for the time being the  
13 issue of the legal custodians, but with respect to the, what  
14 I'll just characterize as the general list of custodians.  
15 The plaintiffs had put in their status report that they  
16 believed that it would be reasonable for Zuffa to go ahead  
17 and perform searches for those custodians that we've  
18 identified that our preliminary review demonstrates that  
19 there are no ESI documents for them, there's no emails or  
20 custodian specific files on the shared drive. And we had a  
21 meet and confer about this on Monday where we indicated that  
22 we may be willing to consider that further, and the only  
23 thought being that it may make sense, if we were willing to  
24 do that, that maybe we'd move that back in the queue so that  
25 we focus on the people that we know have information first.

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1           And after conferring with the client, we are  
2 willing to do perform that search. So to the extent that  
3 that helps address the issues regarding that category, I  
4 wanted to get that out there first.

5           THE COURT: So you're going to do a search to  
6 confirm that you really don't have anything?

7           MR. WILLIAMS: Well, that's right, Your Honor. And  
8 it sounds -- it does sound a little odd. But I guess to the  
9 extent that when you do finally begin doing the extensive  
10 searching that's going to be required here, stuff always  
11 turns up. And so to the extent that there may be an  
12 additional place where information for these people turn up  
13 that isn't found in their emails or a custodian specific  
14 folder for them on the shared drive, then we're willing to do  
15 that. So we agreed with plaintiffs on that.

16           THE COURT: All right. So --

17           MR. DELL'ANGELO: Your Honor, may I just follow --

18           THE COURT: Yes, Mr. Dell'Angelo.

19           MR. DELL'ANGELO: -- follow on that? So we did in  
20 the status report suggest that it may be beneficial for the  
21 parties to meet and confer, and we did so on Monday, as Mr.  
22 Colby has indicated, or Mr. Williams has indicated.

23           And just to put a little bit of context on there.  
24 Part of the issue, Your Honor, was with respect to 13 of the  
25 proposed custodians, Zuffa had reported that there was no

1 email or custodian specific folders. And what we had  
2 suggested, and as I understand that Zuffa has agreed to do  
3 is, as we get into the search for the rest of the custodians  
4 to just make a determination as to whether or not there are  
5 other custodian specific files or folders that are custodian  
6 folders or documents within the larger ESI set that they  
7 have. They're not within the two reported sets which are  
8 ESI and custodian specific folders. And then separately,  
9 outside of ESI, whether or not, for example, there are hard  
10 copied documents that may still exist at the facility, you  
11 know, over at headquarters or something like that, or in  
12 some archive facility, to just kind of close the loop on  
13 those individuals as custodians. That was our  
14 recommendation and proposal and I think we have a general  
15 agreement on that, so.

16 THE COURT: Good.

17 So let's start with the issue with respect to the  
18 identification of Zuffa custodians. If I get the gist, the  
19 parties have agreed on 16 custodians, however three of those  
20 have no emails or ESI and custodian specific folders. And  
21 the parties are at odds because Zuffa proposes that you  
22 perform a search and plaintiff make an election of two  
23 additional custodians. Plaintiffs want 44 additional -- or  
24 44 total, 32 additional to the 30. Sixteen that you've  
25 agreed upon. Correct?

1 MR. DELL'ANGELO: I think there's -- there's some  
2 context that we can provide around those numbers, Your Honor,  
3 but in essence that is correct, yes.

4 THE COURT: You want 44 custodians, they want 18.

5 MR. DELL'ANGELO: That is correct, Your Honor.

6 THE COURT: Okay. That part I got now.

7 MR. DELL'ANGELO: Okay.

8 THE COURT: So let's talk about -- there has been a  
9 great deal of information exchanged, although I understand  
10 some of the latest round of information was that 15 page  
11 single spaced letter that you got at 2:41 a.m. Eastern Time.

12 What -- let me hear from you concerning -- there's  
13 a limit to how much time I'm going to have you do exchanges  
14 about information before you get an ESI protocol in place and  
15 actually search and produce documents. So let me hear from  
16 the plaintiffs about why it is that you need 44 custodians  
17 and why you can't pare down that list.

18 MR. DELL'ANGELO: Sure, Your Honor. Thank you.

19 So you know, we're dealing, Your Honor, with a  
20 fairly complex antitrust case with a 10 year relevant period,  
21 pursuant to your last order. The current employee count, as  
22 we understand it from some public statements for the company  
23 is that Zuffa has between 400 and 500 employees. There are  
24 also a substantial number of former employees, as the Court  
25 has --

1 THE COURT: Have you ever take -- have you ever  
2 been in a lawsuit in which you get to depose all the  
3 employees of a company?

4 MR. DELL'ANGELO: Not -- not --

5 THE COURT: Not unless you have four or five, huh?

6 MR. DELL'ANGELO: That's correct, Your Honor.

7 So what we did, as the status report indicates, and  
8 I think the Court has recognized is that there was  
9 considerable effort by the parties put into identifying who  
10 the custodians are, their predecessors and successors, their  
11 roles, their duties. And what we were able to do as a result  
12 of that process is reduce the potential universe of  
13 custodians down to about 50. And from that universe we  
14 reduced it down to a proposal that is a total of 44. Within  
15 that proposal, Your Honor, however, 13 of those custodians  
16 are ones about whom you just heard, for which there's no ESI,  
17 there are no shared network documents.

18 So as a practical matter, subject to following up  
19 information we may receive from Zuffa about those other  
20 custodians, what we're really talking about is a universe of  
21 31 custodians.

22 And if I may, Your Honor, we prepared a little  
23 chart that I think would be helpful and instructive. I sent  
24 it to -- we prepared it yesterday, and this morning sent a  
25 copy to the defendants this morning. And if I may approach



1 and provide the Court --

2 THE COURT: Certainly.

3 MR. DELL'ANGELO: -- I think it would be helpful.

4 We have additional copies. Do you all have copies?

5 Okay.

6 So we thought it might be helpful, Your Honor, to  
7 put our proposal into context. So we derived this chart that  
8 you have titled "Plaintiff's Custodian -- Plaintiff's  
9 Custodian Proposal" from the information that we got during  
10 the meet and confer process.

11 So if you look at rows 1 through 13, that shows the  
12 13 custodians for whom there's no currently reported ESI and  
13 about whom the parties reported to have this agreement that  
14 they reached as a result of the meet and confer that we had  
15 suggested and had on Monday.

16 If you continue down the list -- so what that  
17 leaves us is with a potential of 31 custodians, Your Honor.  
18 And of those 31, if you look down the list, Your Honor, they,  
19 to give you some perspective, the individuals who are shaded  
20 are those -- are the 16 for whom Zuffa has already agreed to  
21 include as custodians. So that leaves 18 for whom there's no  
22 agreement.

23 And then with respect to those 18 there are four  
24 for whom we've proposed to further limit the searches, and  
25 that's where you see the shading in yellow. So row 16, Mr.

1 Evans; row 35, Ms. Poriadjian, row 37, Mr. Gold, and row 41,  
2 Mr. Zelaznik.

3 As --

4 THE COURT: And those limitations have to do with  
5 the -- their activities internationally?

6 MR. DELL'ANGELO: Or other activities, Your Honor.  
7 So as we came to understand their roles and duties in the  
8 time periods that they held various positions, it was our  
9 conclusion, based on the information that we've been provided  
10 that the periods shaded in yellow, the custodians probably  
11 didn't perform duties that were relevant to the issues in the  
12 lawsuit. So, you know, in an attempt to achieve some further  
13 efficiencies, we recommended that those periods not be  
14 included for those particular custodians.

15 And I think it's notable because if you look at row  
16 35 for Ms. Poriadjian, row 37 for Mr. Gold, and row 41 for  
17 Mr. Zelaznik, those are three of the largest custodians.  
18 We've sorted this by volume order, so there's some additional  
19 efficiencies there.

20 But as you study this information, Your Honor, you  
21 see from row 14 through row 21, each of those custodians are  
22 those eight custodians. Their volume is very small for a  
23 custodian generally, and for -- certainly for a case like  
24 this. I mean collectively they have something like 87,000  
25 email documents. But it's important to even put the

1 information you have in this chart into perspective.

2           So as we understand it, if you look at the far  
3 right column, "Email Time Period," what you see is the  
4 collections that we've been provided and we don't -- it  
5 wasn't clear to us the begin date. But if you see the end  
6 date it goes through, for almost all these custodians,  
7 11/2015. That's several months after the June 30, 2015  
8 cutoffs the parties have agreed to. So these counts are  
9 already larger than they will be for purposes of searching  
10 the custodians.

11           Then there's some other issues. These documents,  
12 as they reported to us, are not just raw emails, they're what  
13 Zuffa has described as email documents. So it's the email,  
14 and as we understand it, all the documents that may be  
15 attached to it.

16           So for example, if you look at row 14 for Mr.  
17 Acquom [phonetic], 6,089 email documents is not even 6,089  
18 emails, it's 6,089 email documents, so emails and  
19 attachments. So I think as you start to sort through these  
20 numbers they'll get smaller.

21           There's also the issue of de-duplication. My  
22 understanding is some of this is de-duplicated but most of  
23 it's not. So when these are de-duplicated against one  
24 another those numbers get even smaller, Your Honor.

25           And then as you continue down, if, for example, you

1 jump to row 24 and you go through row 31, and most of those  
2 custodians again are relatively small, having between 31 and  
3 about 65,000 total email documents. Again, for this period  
4 that's longer than the actual agreed up discovery period.

5 There are really only five custodians, Your Honor,  
6 that have -- that we're proposing that are not already agreed  
7 to, but have larger -- what I would describe as larger email  
8 box that say over 100,000 documents. And again, there are  
9 not only the limitations that I've talked about for three of  
10 them, Mr. Poriadjian, Mr. Gold, Mr. Zelaznik, we've suggested  
11 some other ways to limit them.

12 So I think in totality when you're really talking  
13 about what's likely 31 custodians with ESI, the other  
14 limitations that will naturally be imposed and reduce the  
15 volume on these, it's actually quite a reasonable number,  
16 also when coupled with a recognition of how small many of  
17 these custodians are from an ESI perspective.

18 THE COURT: All right. In a nutshell your 44 isn't  
19 really 44, it's 31, and de-duplication will limit further.  
20 Plus your additional limitations and the difference between  
21 the number of emails and the number of documents is going to  
22 reduce the universe?

23 MR. DELL'ANGELO: That's correct, Your Honor. And  
24 if you look at, you know, again rows 14 through 21, if you  
25 add the volume of all those custodians, those eight

1 custodians, if you get the 87,000 documents that have yet to  
2 be de-duplicated that are reduced for time period, things  
3 like demisting and other filtering techniques could be  
4 applied.

5           You know, on average, it's about the size of one  
6 custodian. And, you know, some of this becomes particularly  
7 important, Your Honor, because there's a fairly aggressive  
8 document retention policy in place at Zuffa. So certainly a  
9 lot of these documents are kind of limited, appear to be  
10 weighted toward the end of the period, so it sort of --  
11 certainly makes it helpful to the extent that there are, you  
12 know, older files imbedded within here that we're able to get  
13 those as well.

14           But yes, I think I want to balance what really  
15 becomes 31 custodians with ESI, Your Honor, after all these  
16 techniques are applied, the volume that you see here will be  
17 reduced substantially.

18           So I think -- thinking about this in terms of  
19 numbers of pure custodians is a little bit of a red herring,  
20 and on balance the proposal the actually quite reasonable.

21           THE COURT: Counsel for Zuffa. Who will be  
22 addressing your client's position?

23           MR. WILLIAMS: Your Honor, I'll handle this  
24 category.

25           THE COURT: Mr. Williams.

1 MR. WILLIAMS: Thank you, Your Honor. Colby  
2 Williams on behalf of Zuffa.

3 Your Honor, when you're dealing with ESI, as you  
4 know all too well, there's a tendency to focus on numbers,  
5 and I understand that, and it's natural. And we've just  
6 heard how the numbers that were proposed in plaintiff's  
7 demonstrative exhibits are going to go down. And I think  
8 there's a reason that they have pursued that theme, and it's  
9 because they didn't include the totals on these, which we  
10 put together while -- after we got this this morning and so  
11 let's focus a little bit on the numbers because I think  
12 they're going to change the other direction as well, and  
13 they're going to. So while we've heard how they can come  
14 down. There's also other ways they're going to go up.

15 The first example is that one of the custodians  
16 that has now been agreed upon is John Mulkey. John Mulkey is  
17 our Chief Financial Officer. John Mulkey's email volume is  
18 not included on here because he was a late add. Originally  
19 there was a dispute whether he should be included or not,  
20 and we ultimately agreed that -- agreed that he will be  
21 included. And we haven't gotten a specific number. But the  
22 preliminary number for his emails looks like they're  
23 somewhere on the order of 150,000.

24 So in addition to that, when you get beyond the  
25 other categories beyond email, when we're talking about

1 network volumes and things of that nature, we've talked a  
2 little bit in previous status checks and reports, and a  
3 little bit today about custodian specific files on the shared  
4 drive.

5 Well, there's also a group shared drive with -- we --  
6 -- you know, we're going to go through it and we're going to  
7 see what's on it. But again, that appears to contain 353,000  
8 files, 1.89 terabytes of data that we're going to have to go  
9 through.

10 And so when you compare what we've proposed versus  
11 what the plaintiffs have proposed in total numbers, so if we  
12 talk -- and this excludes Mr. Mulkey, who I just referenced,  
13 the total email volume that we are proposing for our  
14 custodians is 980,958, whereas when you look at what the  
15 plaintiffs have proposed, that number jumps to 1,932,553.

16 And just because email documents may include  
17 something beyond email, the attachments for example, it  
18 doesn't mean there's much less burden involved. They still  
19 need to be collected; they still need to be reviewed. So --

20 THE COURT: Have you done any surveying or  
21 preliminary sampling to determine what percentage are going  
22 to be called out in the de-dup [sic] process?

23 MR. WILLIAMS: Your Honor, the answer to that  
24 question is no. Our vendor is actually onsite this week  
25 engaging in activities, you know, in conjunction with this

1 case.

2 But it's important for us to get an idea from the  
3 Court who the custodians are going to be so we can collect  
4 the data and get it uploaded to the review platform. And  
5 once it's there we can then engage in a more specific  
6 analysis of the data, including the de-dup process. So I  
7 don't have an answer for the Court at this point because we  
8 have to get this initial step figured out first.

9 So, Your Honor -- and with respect to -- let me --  
10 I'm going to pull out an example of a custodian where there  
11 is no agreement and there's a substantial number of emails,  
12 and that's Mr. Marc Ratner. Marc Ratner has something on  
13 the order of 125,000 emails. Mr. Ratner is a senior VP and  
14 head of government affairs for us. What Mr. Ratner does is  
15 he -- you may recall, Mr. Ratner was the former Executive  
16 Director for the Nevada State Athletic Commission here for a  
17 number of years. He's been working at Zuffa for I think the  
18 better part of a decade. And what Mr. Ratner does is he  
19 goes around across the country and lobbies various government  
20 bodies with respect to the legalization of MMA, and that's  
21 what he does.

22 That doesn't have anything to do with the anti-  
23 competitive claims that are at issue in the complaint. And  
24 so while plaintiffs may say well, it's just adding another  
25 one in there. True, but there has to be proportionality,



1 there has to be reasonableness, and they're not going to get  
2 anything from Mr. Ratner, and there are others that fall into  
3 that category.

4           So we submit that we've -- you know, we've made a  
5 reasonable proposal, we've said 16 are agreed to, pick two  
6 additional others. But it's important to remember, Your  
7 Honor, we've also said two isn't a firm number. If you come  
8 to us and you say you know what, in addition to those 18 we  
9 want these three, then we're willing to consider it and  
10 probably do it, Your Honor. But 44 or 31, whatever the  
11 number really is, as they characterize it, is just too much.

12           THE COURT: Well, they were asking for basically 15  
13 more than you've agreed to. Actually 13 more than you've  
14 agreed to because you've agreed to 16 plus two.

15           MR. WILLIAMS: That's right, Your Honor. That's  
16 right. So, unless the Court has any other questions on this  
17 issue I'll sit down.

18           THE COURT: Nope.

19           We'll allow the plaintiffs to select an additional  
20 six beyond the 16 that have been agreed to for custodians,  
21 unless, for good cause shown, there is some essential person  
22 that you haven't been able to identify at this stage with the  
23 information that you have, I'll leave the door open, but  
24 you're going to get an additional six.

25           MR. DELL'ANGELO: Thank you, Your Honor.

1 THE COURT: Okay.

2 MR. DELL'ANGELO: May I just correct one issue for  
3 the record before we leave this subject? I think it was  
4 indicated that Mr. Mulkey was a late add, and I would  
5 respectfully disagree with that.

6 If I could direct the Court's attention to the  
7 prior joint status report at Docket 199 at ECF page 39.

8 THE COURT: Late is relative. I understood that.  
9 Yes.

10 MR. DELL'ANGELO: Okay. Thank you, Your Honor.

11 THE COURT: The next issue has to do on the  
12 proposal concerning the limitation on searches for the legal  
13 department custodians for specific individuals. The issue  
14 here is the defendant's propose to limit the collection,  
15 search and review of potentially responsive documents for  
16 these four individuals, Bellamy, Hendrick, Mersch and Long  
17 to external communications and plaintiff's propose that the  
18 defendants be required to collect, search and review for  
19 potentially responsive documents, both internal and  
20 external.

21 So let me hear from the party proposing the  
22 limitation and why a limitation is reasonable?

23 MR. WILLIAMS: Sure, Your Honor.

24 THE COURT: Again, this is Mr. Williams for the  
25 record.

1 MR. WILLIAMS: Yes. Thank you, Your Honor. Colby  
2 Williams on behalf of Zuffa.

3 Your Honor, I think it's important to clear up the  
4 argument and the theme that you see in plaintiff's papers  
5 that we're asserting a blanket privilege with respect to  
6 these custodians. We aren't. So let me break it down a  
7 little bit.

8 With respect to Lawrence Epstein and Sonja  
9 McKinney, because of the document retention policy they  
10 don't have a lot of information, so we've excluded that --  
11 well --

12 THE COURT: So you're not giving up much --

13 MR. WILLIAMS: Right. Right.

14 THE COURT: -- so it's okay with you.

15 MR. WILLIAMS: Understood, Your Honor. I get it.  
16 [Laughter].

17 MR. WILLIAMS: So I understand that's not a big  
18 gift there, but I just wanted to go through the players.

19 So the next categories that we have, we've got  
20 Kirk Hendrick. Kirk -- Mr. Hendrick did serve a dual role,  
21 plaintiffs are absolutely right about that. He started off  
22 as general -- I don't know if it was general counsel, but he  
23 was lead counsel in-house. His duties then changed to Chief  
24 Operating Officer. And then in late 2012 he became --  
25 excuse me, Chief Operating Officer, he's now chief legal

1 officer.

2 Let me clarify what our position is with respect to  
3 Mr. Hendrick. During the time that he was chief operating  
4 officer we're not proposing any sort of limitation.  
5 Obviously he was not functioning in his capacity as counsel  
6 then, and so I want to clarify, to the extent it isn't  
7 already, that we're not -- the proposal that we're offering  
8 here is not including the time frame when he was COO.

9 With respect though when he's chief legal officer  
10 and then also with Tracy Long, who has been a long time  
11 employee in the legal department. Mr. Mersch, who was former  
12 associate general counsel in the legal department. And we  
13 have one other who falls under this category.

14 The proposal that we're making is that with respect  
15 to communications that occurred with third parties, which is  
16 going to get at the heart of what plaintiff's claims are.  
17 You know, the communications with fighters and negotiating  
18 their contracts. You know, we're going to produce that  
19 stuff. The limitation we'd seek to include is that for  
20 purely internal communications that we don't have to review  
21 it, insofar as we're reviewing the custodian files for the  
22 people in the legal department. But that is not tantamount  
23 to a blanket assertion of privilege for the following  
24 reason.

25 To the extent that an email is sent to Mr. White

1 or Mr. Fertitta, when we search those custodian files and  
2 they've received an email from someone in the legal  
3 department, it's going to have to be reviewed and logged.  
4 We're going to do that.

5 But to the extent that we're reviewing the hundreds  
6 of thousands of emails for the legal custodians, our proposal  
7 is that it's overly burdensome for us to review and log all  
8 of those. Now I understand not all of them necessarily would  
9 be a privileged communication, but we believe the vast  
10 majority of them will. And that plaintiffs will still be  
11 able to get the information they're entitled to by -- through  
12 our proposal. So that's where it comes down.

13 With respect to Mr. Bellamy, we're already  
14 producing Mr. Epstein, Ms. McKinney, Kirk Hendrick, Tracy  
15 Long, Michael Mersch, that's five people within the legal  
16 department. Mr. Bellamy negotiates contracts, is the  
17 primary thing that he does. To the extent that he's not out  
18 there pitching the attractiveness of a particular business  
19 deal or anything like that, he's the nuts and bolts of  
20 putting together a transaction.

21 The plaintiffs are going to get the subject  
22 contract that resulted, you know, from the negotiations that  
23 took place. Mr. -- going through hundreds of thousands of  
24 emails that are in Mr. Bellamy's files aren't going to give  
25 the plaintiffs anything else. And to the extent that we're

1 already doing it for the other people in the legal  
2 department, we think he should be excluded. But to the  
3 extent the Court rules he is included in the mix, then we  
4 obviously believe he should be subject to our limitation.

5 THE COURT: Address the plaintiffs' arguments that  
6 they don't expect a document by document privilege log. And  
7 there are other tools that you can use to identify likely  
8 privileged documents and employee search techniques that  
9 limit what would be truly privileged. For example, you  
10 could run a search for all of the names of all of your  
11 outside counsel and eliminate all communications between  
12 these individuals and the folks that you know are outside  
13 counsel.

14 MR. WILLIAMS: Right. Well, Your Honor, I think  
15 that, you know, to the extent we -- that would deal with  
16 communications with third parties. And our proposal on that  
17 is that, to the extent we've communicated with third parties,  
18 other than our outside counsel, then we're going to produce  
19 those.

20 THE COURT: That part I understand.

21 MR. WILLIAMS: Okay.

22 THE COURT: But you're talking about out -- outside  
23 counsel is something that would be a relatively easy thing  
24 for you to identify --

25 MR. WILLIAMS: Right.

1 THE COURT: -- one would think, in terms of  
2 identifying those communications are most probably absolutely  
3 privileged.

4 MR. WILLIAMS: Mm-hmm.

5 THE COURT: There are a series of techniques, it  
6 would seem to me, that you can employ to lessen the burden on  
7 what you fear doing, which is, you know, a document by  
8 document. You know, for example -- and privileged  
9 preparation or document by document review.

10 For example, you could identify in some manner a  
11 litigation file of so and so re: this case or that case --

12 MR. WILLIAMS: Mm-hmm.

13 THE COURT: -- this litigation, that litigation  
14 case to cull down the universe because what I perceive is the  
15 difficulty of your proposal is there may very well be some  
16 sensitive information that were exchanges among the legal  
17 custodians --

18 MR. WILLIAMS: Mm-hmm.

19 THE COURT: -- that are relevant and discoverable  
20 in this litigation that are not going to be captured in your  
21 outside only or custodian search.

22 MR. WILLIAMS: Yeah. Your Honor, I need to think  
23 a little bit about what -- and make sure I understand.

24 So with respect to the -- what we're proposing to  
25 put the limit on are the internal communications.

1 THE COURT: That I understand.

2 MR. WILLIAMS: Okay.

3 THE COURT: And I'm saying but there may be --

4 MR. WILLIAMS: And I -- I understand the Court gets  
5 it.

6 THE COURT: -- very well be some very sensitive  
7 internal communications that would be responsive and  
8 discoverable --

9 MR. WILLIAMS: Mm-hmm.

10 THE COURT: -- among the legal custodians.

11 MR. WILLIAMS: Among the legal custodians.

12 THE COURT: Correct.

13 MR. WILLIAMS: Okay. So we're excluding -- you  
14 know, to the extent that there's a communication from a  
15 legal custodian to a non-legal custodian that would get  
16 picked up and if privileged, logged when the non-custodian --

17 THE COURT: With the limitation of the number of  
18 custodians I'm allowing.

19 MR. WILLIAMS: Correct. Correct, Your Honor.

20 So with respect to, you know, purely internal  
21 communications among legal custodians, to be perfectly  
22 candid with the Court, I would have to defer to someone  
23 that's more, you know, experienced with respect to the  
24 technique, the actual technology that could be employed to  
25 potentially limit that search. As I sit here, you know, I



1 can't clarify for the Court whether there's an ability to do  
2 that or not, that would make sense. From my own experience,  
3 you know, having represented Zuffa from, you know, 2007 I  
4 think, you know, the legal department, to the extent that --  
5 I mean there's a myriad of legal issues that come up, and  
6 they aren't just limited to, for example, you know, a  
7 particular piece of litigation.

8           You know, you have fighters who get into trouble  
9 all over, or you have things that happen that require, you  
10 know -- you know, a lot of communications that I think it  
11 would be -- you know, it's going to be tough to just like  
12 categorize this legal issue or that legal issue to  
13 potentially exclude it. That's just my, you know, off the  
14 head observation.

15           Now I would defer, to the extent that there's  
16 something that, you know, would accommodate what the Court  
17 suggests. I mean I'll certainly confer --

18           THE COURT: Well, these are suggestions that  
19 plaintiffs have made --

20           MR. WILLIAMS: Mm-hmm.

21           THE COURT: -- and they are suggestions that have  
22 been employed in other cases that I've shepherded.

23           MR. WILLIAMS: Mm-hmm.

24           THE COURT: There are techniques that can be used  
25 when you have files that are likely to contain a high

1 percentage of privileged materials.

2 MR. WILLIAMS: Right.

3 THE COURT: But you really haven't explored that  
4 with your consultant to determine if that's feasible or to --

5 MR. WILLIAMS: Speaking for myself, Your Honor.  
6 When I sit down and we'll listen to plaintiffs' counsel,  
7 I'll determine whether my representation to the Court in that  
8 regard is -- it's certainly accurate as far as I'm concerned,  
9 but to the extent we have additional information I can  
10 provide --

11 THE COURT: All right.

12 MR. WILLIAMS: -- I'll get back up here and let you  
13 know what it is.

14 THE COURT: All right. Mr. Dell'Angelo.

15 MR. DELL'ANGELO: Your Honor, Michael, Dell'Angelo.  
16 I think I can brief -- be brief, Your Honor.

17 The four custodians at issue, Mr. Bellamy, Mr.  
18 Mersch, Mr. Hendrick and Ms. Long, are not legal custodians  
19 who are theoretical, or were chosen in a vacuum. With  
20 respect to three of them in particular, Bellamy, Mersch and  
21 Hendrick, they were all identified in response to  
22 plaintiffs' interrogatory number 6 that asked for people who  
23 had responsibilities with respect to specific issues that  
24 were --

25 THE COURT: No, I understand that.

1 MR. DELL'ANGELO: Okay.

2 THE COURT: And they acknowledge that these are --

3 MR. DELL'ANGELO: Yeah. Right.

4 THE COURT: -- important people that you need  
5 discovery about.

6 MR. DELL'ANGELO: Okay.

7 THE COURT: Their comments are, you're going to get  
8 what you need and what's reasonable and proportional to the  
9 case, between a combination of the responsive documents from  
10 the custodians that you're going to get, plus the outside  
11 external communications with all the people that, you know,  
12 that have to do with the issues that are involved, the  
13 promoters, the fighters. You're going to get all of that,  
14 so you're essentially getting what you need anyway and  
15 saving them the huge cost and expense of reviewing hundreds  
16 and hundreds of thousands of likely privileged documents.

17 MR. DELL'ANGELO: So I think, Your Honor, that  
18 view misses the point for a couple of reasons that we just  
19 heard.

20 The first is that when you consider that we're  
21 dealing with four custodians for whom you have the volume in  
22 that chart that we provided to you in connection with the  
23 larger custodial discussion, you can see that the volumes  
24 are not -- are not vast for these four, even collectively.  
25 Then there are the limitations with respect to the time

1 period that we talked about, then it was time period being  
2 longer.

3 But all of these custodians had duties that were  
4 both legal and non-legal. And with respect to Mr. Bellamy,  
5 Mr. Mersch and Ms. Long, they were all very clearly  
6 overlapping. They were serving both legal and non-legal --  
7 in non-legal and legal capacities simultaneously. And what  
8 we don't know is what the de-duplicated amounts look like,  
9 what percentage of their time was spent performing a legal  
10 function versus a non-legal function, and therefore from  
11 which you might derive some sense of what the volumes of the  
12 emails at issue might actually be, and what percentage of  
13 those emails are internal versus external.

14 So what is being proposed is a blanket assertion of  
15 privilege, as we understand it, for any internal  
16 communications with any custodian that's not one of the other  
17 agreed upon custodians subject to your order. And that I  
18 think clearly excludes a lot of the communications that these  
19 custodians would have had internally. And this is where it  
20 gets to the nub of the issue.

21 What you see in the status report and what you  
22 just heard is that plaintiffs will get -- that Zuffa's  
23 proposal will give plaintiffs the communications they need  
24 with the fighters, right, and with third parties that are  
25 about the issues in the case. But what Zuffa's proposal

1 does is that it excludes all of the communications about  
2 those dealings. The communications by these individuals who  
3 held titles like Senior VP of Athlete Relations, et cetera.  
4 It excludes all of the internal communications about, you  
5 know, the external communications; internal communications  
6 about the communications with the fighters, et cetera.

7           And I think, you know, in a case like this, those  
8 are, as I think the Court recognized, often the really  
9 critical documents that just get lost in this process. And  
10 as the Court also recognized, I think there are a number of  
11 ways that the parties can work together and sort of limit the  
12 burden which hasn't really been demonstrated in any sort of  
13 quantifiable way. And we proposed a number of those, and  
14 they simply -- and you know, unfortunately as yet haven't  
15 been accepted, but I believe that we can work together to  
16 find some way to make our proposal reasonable and workable.

17           THE COURT: Mr. Williams, anything you want to add?  
18 Any additional intelligence to the mix?

19           MR. WILLIAMS: Your Honor, I came up a little  
20 short, but I don't have anything in the way of specific  
21 techniques that can be employed by our vendor. But what I  
22 -- what I would offer to the Court and to counsel is that to  
23 the extent that there is a specific suggestion, and I don't  
24 know that I've heard it, but with respect to how this can be  
25 done to lessen the burden and proportionality, then we're

1 happy to consider it and meet and confer on that issue.

2 I think the burden, again, just to address that  
3 point, has been shown. I mean we're talking about over 560  
4 some odd thousand emails. So -- and I understand we haven't  
5 gotten them on the platform and that number may shift as a  
6 result of de-duplication and things, but it's still a  
7 significant number. And we suggest as, you know, currently  
8 proposed by plaintiffs, it's just not proportional to the  
9 burden and the needs of this case, so.

10 THE COURT: I'm not going to allow the defendants  
11 to not produce internal communications among the legal  
12 custodians that are at issue in this case. I will allow you  
13 to come up with a reasonable proposal to limit the search  
14 methodology in a way that is likely to isolate and prohibit  
15 you from doing a document by document review of likely  
16 privileged materials.

17 Though suggest you talk with your consultant about  
18 that and how to go about -- your client is in the best  
19 position to know what kind of documents you have, how they're  
20 organized, and provide the information the consultant will  
21 need to come up with a proposal that limits the burden. But  
22 I agree with counsel for plaintiffs that some very highly  
23 probative and sensitive information is likely to be in those  
24 materials that are not necessarily privileged and may have  
25 been shared with a non-custodian.

1           So let me shift to the issues concerning the  
2 identity class/about class. And the plaintiffs want me to  
3 revisit this issue, saying it wasn't specifically addressed.

4           When I limited the files you were going to get --  
5 the contract files you were going to get, and the defendants  
6 are telling me you're basically trying to get another bite at  
7 the apple 'cause you didn't like the first ruling.

8           So let me put you on the hot seat, Mr.  
9 Dell'Angelo.

10           MR. DELL'ANGELO: With pleasure, Your Honor.  
11 Michael Dell'Angelo.

12           I don't see this as revisiting the issue, Your  
13 Honor. So if you look at the last status conference, or  
14 status report, there was a discussion about contracts, and  
15 there was a whole separate issue about statute of limitations  
16 and how that had an interplay with, you know, certain swaps  
17 of documents.

18           And as the Court may recall, we were quite limited  
19 in our time last time and you asked us to get to some of the  
20 most important issues. And one of the -- one of the several  
21 issues that we didn't reach was how the statute of  
22 limitations argument, defendants -- or defendant has raised  
23 has an interplay here.

24           So here's how we understood the issue. That, you  
25 know, as the Court I think is aware that there's a bout class

1 and an identity class. The bout class in sum, is all  
2 fighters who fought a bout during a bout -- during the class  
3 period. And the identify class are fighters whose identity  
4 was used by Zuffa during the class period. Those are really  
5 two mutually exclusive groups of people because, for example,  
6 you may have members of the identity class who stopped  
7 fighting before the class period began but whose identity  
8 continued to be used through that period.

9           So what you end up with is the sort of delta of  
10 identity class members who don't fall within the bout class.  
11 And all we're really asking for is to make sure that we know  
12 who those people are, that is, you know, know who the  
13 members of the identity class are. And to the extent that  
14 contracts and contract files for the class members will be  
15 produced, that we get for the identify class what we're  
16 getting for the bout class, which is their contract files and  
17 their contract; and that members of the identity class who  
18 don't also fall within the bout class don't get lost in the  
19 shuffle here and excluded from discovery.

20           So we can quibble with Zuffa about whether or not  
21 we're revisiting the issue, whether or not it was covered,  
22 but the reality is it's a very important issue because lost  
23 in the shuffle here will be a portion of the identity class  
24 for -- that's defined in the complaint that it was as  
25 sustained, and it will be lost in the discovery process.



1           And, you know, there is clearly an issue that Zuffa  
2 has raised with respect to legal issues that they've raised,  
3 with respect to whether or not members of the identity class  
4 who didn't sign a contract or fight a bout during the class  
5 period have a claim. I think we -- Zuffa has acknowledged  
6 that from their perspective that signing a contract is the  
7 injury. We think that the injury is also every time the  
8 identity is used, and that happens during the class period.

9           So that -- but my view is -- or our view, Your  
10 Honor, is that that -- that disagreement shouldn't just drive  
11 discovery as to whether or not the contracts, contract files  
12 and other documents from identify class members who don't  
13 fall within the bout class shouldn't be produced.

14           THE COURT: And the legal -- isn't it the legal  
15 issue whether the identity class, what's the applicable  
16 period of time? What's the applicable statute of limitation  
17 for the identity class? Is it -- Zuffa says it's -- if they  
18 didn't sign a contract within the applicable class period  
19 they're out of luck. You say if -- doesn't matter when they  
20 sign their contract, if their image was exploited during the  
21 class period they've been injured and they have a right to  
22 recover.

23           MR. DELL'ANGELO: That's correct, Your Honor.

24           THE COURT: And you want to make sure that you have  
25 the ability to identify any of those people who may not be

1 members of the bout class but may -- may have had their  
2 identity exploited during the class period.

3 MR. DELL'ANGELO: That's exactly correct, Your  
4 Honor.

5 THE COURT: Why isn't this a matter that should be  
6 resolved as a matter of law and a sequencing issue with  
7 respect to need for future discovery?

8 MR. DELL'ANGELO: So we don't have any issue with  
9 this Zuffa's defense, if you will, being resolved as a  
10 matter of law, but it's incumbent upon Zuffa to raise that  
11 issue.

12 I mean, for example, that issue could have been  
13 raised at the motion to dismiss stage on a -- in a 12(c)  
14 motion, right? But it wasn't. And so what's happening is,  
15 we're now months and months into the case.

16 THE COURT: They're not filing a motion but they  
17 want to preclude you from getting the discovery.

18 MR. DELL'ANGELO: That's correct, Your Honor.

19 THE COURT: Okay.

20 MR. DELL'ANGELO: So one of these two things has  
21 to happen, and the reality is there's a group of class  
22 members -- identity class members for whom discovery is  
23 being lost and who are being left behind. And then this  
24 begs the next question, you know, as we get into the  
25 contract files, as we get into the electronic files, all

1 those sorts of things, because this group of plaintiffs get  
2 left behind only for us to find out, you know, what we think  
3 the law is quite clear on with respect to continuing  
4 violations, that these members of the identify class are in  
5 the class and that they do have a continuing harm and that  
6 the statute hasn't run against them. Do we then need to  
7 sort of go back and revisit all of this discovery issue,  
8 which becomes I think far more inefficient than just getting  
9 it now. But either way, I think it needed to have been and  
10 should be raised. And given the status quo, you know, we are  
11 entitled to and should receive the discovery.

12 THE COURT: Defense counsel, Mr. Cove.

13 MR. COVE: Thank you, Your Honor. John Cove for  
14 Zuffa.

15 We believe the issue was resolved at the last  
16 hearing. I don't think I need to belabor that point. We  
17 think the issue is a clear question of law, which is whether  
18 the claim of a plaintiff who is allegedly injured out --

19 THE COURT: Then why haven't you raised it?

20 MR. COVE: Well, there are some facts that have to  
21 be submitted in connection with a motion for summary  
22 judgment as to -- as to who did what when. And we can raise  
23 it as soon as possible. We haven't done it yet. There are  
24 some issues that we hadn't anticipated that they raised in  
25 the last joint status report as to the legal standards that

1 would apply, and I think we need to analyze whether there are  
2 facts -- we don't agree with their legal analysis, but  
3 whether there are facts that are necessary to deal with  
4 those. But we think the --

5 THE COURT: And if there are then you need a  
6 developed record in order to get a decision as a matter of  
7 law.

8 MR. COVE: Right. But I think we have a -- we can --  
9 -- we have not gotten any discovery from them. I think we can  
10 file a motion for summary judgment and they can file a Rule  
11 56(f) opposition if they think --

12 THE COURT: Which is going to say they need the  
13 identity of the fight --

14 MR. COVE: Well, this would not be a motion for  
15 summary judgment as to the class, it would be a motion as to  
16 summary judgment as to particular named plaintiffs who -- or  
17 currently named plaintiffs who fit in this factual situation.  
18 We couldn't -- we couldn't do anything with regard to the  
19 class before we have a certified class. But the --  
20 fortunately we have a plaintiff -- we have plaintiffs, Mr.  
21 Quarry did not -- neither fought nor signed a contract within  
22 the statute of limitations period, and two of the others  
23 signed a contract before but fought in the statute of in  
24 limitations period. So there's a factual scenario to file a  
25 motion for summary judgment as to both of those categories.

1 We think the legal analysis is the same but it captures -- it  
2 will capture -- it will set a precedent for everybody else in  
3 the class or the punitive class that falls in those  
4 categories that did not sign a contract within the statute  
5 of limitations period.

6 We think the law is quite clear that what matters  
7 is when you are injured, the cases that they cite in their  
8 brief all deal with conduct of the defendant that occurred  
9 before the limitations period and allegedly caused an injury  
10 in the limitations period, and then there's an issue of  
11 whether there was a continuing violation or not.

12 We don't have that scenario here. We have an  
13 injury, you know, regard -- accepting that they, for the  
14 sake of argument, they've alleged a continuing monopolization  
15 violation. That is not going to extend the statute for an  
16 injury that occurred beforehand, before the statute of  
17 limitations period.

18 So -- and there's a --

19 THE COURT: Correct. But if they don't know who  
20 all these people are --

21 MR. COVE: Well, we are going to identify -- the  
22 material that we provide will provide all the identities of  
23 everybody who fought for the UFC. They will get that  
24 information. We've told them they will get that  
25 information.

1           So, and there's an additional complication, or  
2     initial issue I want to raise that even accepting their  
3     theory, they allege that the monopolization scheme began in  
4     2005. So a plaintiff who signed a contract before 2005 would  
5     not have been injured by any anti-competitive conduct, even  
6     if Zuffa later used that person's rights in the limitations  
7     period. Now that person doesn't have any standing to assert  
8     a violation or an injury that occurred to somebody down the  
9     road.

10           You know, according to their theory of the  
11    complaint, the market was competitive from 2000 and 2005,  
12    and those people, if they signed a contract, regardless of  
13    whether they're allegedly injured later, couldn't possibly be  
14    in the class.

15           Similarly, Zuffa has purchased fight libraries  
16    from certain promoters. Those libraries are replayed on  
17    Zuffa's website. Those fights are replayed, you know, under  
18    the rights that were granted to the original promoter and  
19    then that Zuffa acquired. Clearly there was no anti-  
20    competitive conduct with regard to the original promoter, and  
21    those plaintiffs don't have any standing either.

22           So we think that this thing can all be resolved as  
23    a matter of law, and can start to narrow the case very, very  
24    quickly here.

25           What they've suggested they want to do is try to

1 figure out somehow, how every time a Zuffa -- excuse me,  
2 every time a fighter's name or likeness was appeared or used  
3 in any promotional material in any way at any time by Zuffa,  
4 any time that occurred, that's impossible to do. It's  
5 incredibly burdensome to attempt to do, so we think it's very  
6 important right now to narrow the --

7 THE COURT: But if I understand you correctly  
8 you're saying you're going to give them the category, such  
9 as the merchandising --

10 MR. COVE: Yes.

11 THE COURT: -- data and the video imaging data?

12 MR. COVE: Well, we -- no, it's not video. I'm  
13 sorry. It's not video imaging data. There's a video game  
14 and certain athletes were in it and, therefore, there are  
15 clear records that were kept in the normal course of business  
16 as to who was in it and who got paid what under that, and the  
17 same with merchandising deals.

18 So those discrete kind of arrangements we can  
19 provide that data and we are going to provide that data. The  
20 problem is every time a video came up on the website, or  
21 every time somebody's picture came up when they were  
22 advertising a fight between, you know, Fighter A and Fighter  
23 B, and you're trying to promote Fighter A, and -- but  
24 Fighter B is in the picture, we can't figure out every time  
25 Figure B's image was used. That's impossible to do and it's

1 going to be extremely burdensome, and they're insisting on  
2 that.

3           So that's why we think it's important to really  
4 narrow this soon. And we can file a motion for summary  
5 judgment pretty soon and then get the case narrowed. And you  
6 know, in the meantime we've already agreed they get all the  
7 -- all the fight -- everybody who fought after December 10<sup>th</sup>,  
8 2010. We've also agreed that we're going to provide all the  
9 electronic restored contract files for all the fighters.  
10 We're still working through that. It's turning out to be a  
11 little more burdensome than we -- I think we thought last  
12 time because --

13           THE COURT: It was your proposal.

14           MR. COVE: No, I know it was, but I'm just  
15 explaining, it's -- we thought it would be a relatively clean  
16 contract file, and there's graphs and there's privileged  
17 material in those electronic files. They're not in one  
18 single drive, and we're compiling them, but it will take more  
19 review than originally anticipated to make sure that we're  
20 not -- that we're not providing privileged material and so  
21 forth.

22           So that's what we think we should do is, we think  
23 this motion -- this issue was resolved as far as what would  
24 be produced with regard to the contract files. We think the  
25 issue can be narrowed by a prompt summary judgment motion.



1 And therefore, there's nothing for the Court to do on this  
2 issue right now.

3 THE COURT: I do sustain Zuffa's position in this  
4 regard. I did visit this. We did talk about contract files.  
5 We did talk about what the universe was. And for a certain  
6 category of information that they're going to get everything  
7 in the files, and for the -- and you did represent that you  
8 give historical documents dating back even longer. So I  
9 sustain your position in this regard.

10 MR. COVE: Thank you, Your Honor.

11 THE COURT: And that leaves the issue with respect  
12 to the total number of interrogatories that each party may  
13 serve.

14 Plaintiffs propose that the defendants be limited  
15 to ten interrogatory -- individual interrogatories addressed  
16 to the individual clients. Correct?

17 MR. DELL'ANGELO: Yes, Your Honor. But while we're  
18 on the subject of interrogatories though, I just would ask,  
19 before we move on if we could just indulge you for a  
20 clarification because in the joint status report one of the  
21 items that was at issue was also Zuffa's response to  
22 interrogatory number 2, which I think was very clear --

23 THE COURT: If I wasn't explicit enough, I'm not  
24 going to compel them to respond further than they have.  
25 They've identified all of the fighters. The sub-information

1 is information that they're entitled to respond with a Rule  
2 33(d) response. And once you get that material, if it's  
3 inadequate, I leave the door open for you to tell me that.  
4 But that's -- for the first round, for what they're required  
5 to do, I sustained their position, and that has to do with  
6 interrogatory number 2 as well.

7 MR. DELL'ANGELO: Thank you for the clarification,  
8 Your Honor.

9 THE COURT: Sure.

10 So now we're moving along to the number of  
11 interrogatories that each side may propound.

12 I take it both sides propose a consolidated set  
13 that's basically the contention variety. And then I'm not  
14 clear what information you want from the individual fighters  
15 that can't be covered in ten interrogatories. The individual  
16 plaintiffs that is.

17 MR. COVE: Your Honor, John Cove.

18 Well, at this point in the litigation, I mean there  
19 are a number of things that we would like the fighters to  
20 answer individually, such as -- and we haven't served any  
21 interrogatories yet.

22 THE COURT: I understand that. But usually  
23 interrogatories are really not a very efficient way of  
24 getting a lot of information in a complex case.

25 MR. COVE: Well, there are various -- I mean we

1 need to know where they fought; when they fought and how much  
2 they were compensated; who made them other offers that they  
3 did not accept; who made them offers for sponsorships that  
4 they either accepted or did not accept; who made them offers  
5 for merchandise that they either accepted or didn't accept.  
6 You know, what do they do internationally; what offers did  
7 they have to fight outside the United States. All those kind  
8 of issues.

9           It's -- I don't know how many I've just rattled  
10 off, but those are the kind of issues we would want an  
11 individual response to. We don't think that in light of --  
12 especially in light of the burden that we are put to here,  
13 that having the fighters answer those individually is going  
14 to be extremely burdensome at the level of 20. And I don't  
15 know that there will be 20, it's just at any stage of the  
16 case, once the experts get involved and other things like  
17 that, there may be additional ones that we think of. I  
18 think I've probably rattled off, if they're separate  
19 interrogatories, eight or nine already, and I don't think any  
20 of them were unreasonable. I think they're all very logical  
21 and simple.

22           So I think 40 interrogatories in total is not  
23 extremely burdensome, in light of the proportionality here.  
24 We've got 20 -- you know, we have 20 that all -- that can be  
25 answered all at once, and another 20 is not unreasonable.

1 And if we don't use them on individuals we could use them for  
2 a total of 40 that they could be answered jointly.

3 So I don't -- I just don't see it as any potential  
4 for harassment or undue burden. It may be that there aren't  
5 20. But since I can think of eight or nine right now off  
6 the top of my head, and not all the class and other issues  
7 have been crystalized yet, I think 20 is not unreasonable to  
8 keep as an open number.

9 THE COURT: All right. Do I hear 10?

10 Mr. Dell'Angelo.

11 MR. DELL'ANGELO: You do. You do, Your Honor.  
12 Michael Dell'Angelo.

13 So, you know, our approach to this, Your Honor, is  
14 largely a result of the observation that you had, which is  
15 that interrogatories are not a particularly efficient way of  
16 getting information. And the -- we tried to lay this out in  
17 the joint status report. But the difference between 10  
18 interrogatories to be answered individually by each  
19 plaintiff, as we had proposed, and 20 actually increases the  
20 burden quite substantially from a numerical perspective.

21 So I think, as the Court is aware, as a result of  
22 the stipulation that it entered recently, plaintiffs are  
23 proposing to file an amended consolidated complaint and may  
24 reduce the total number of plaintiffs. But even if that  
25 number is taken to 60 -- or excuse me, six plaintiffs, for

1 example, with 10 interrogatories individually to be answered  
2 by each plaintiff and 20 collectively, you're still looking  
3 at 80 interrogatories. And with the same six plaintiffs  
4 under Zuffa's proposal, that number swells to 140. And then  
5 with each plaintiff that, you know, that number sort of  
6 increases substantially.

7 And I think for a relatively inefficient method of  
8 gathering discovery, it becomes extremely burdensome to deal  
9 with, you know, all these plaintiffs answering all of these  
10 individual questions when they've already, you know, rather  
11 broad discovery requests for documents to each of them. So  
12 we think that the proposal that we've set forth is actually  
13 quite reasonable and sort of -- will meet all of Zuffa's  
14 needs.

15 So we've been at this issue for quite some time,  
16 as the Court is aware. And even as of today, you know,  
17 counsel can't give you more than seven, eight, nine  
18 interrogatories. So it's difficult from our perspective to  
19 understand what the need really is.

20 THE COURT: Okay. Mr. Cove, be efficient. You're  
21 limited to 10 per individual plaintiff and 25 total  
22 consolidated.

23 MR. COVE: Thank you, Your Honor.

24 THE COURT: Okay. Are there -- the next issue has  
25 to do with the limitation on the number of depositions. Both

1 sides don't want to be limited to 10. Defendants propose 150  
2 total hours so that that can be divvied up and parties will  
3 have an incentive to be as efficient as possible and not have  
4 every deposition last seven hours.

5 And plaintiffs propose 70 deposition because you  
6 have 31 employees identified in your initial disclosures and  
7 80 outside individuals with discoverable information, and so  
8 they think that's reasonable.

9 So let me hear from counsel for plaintiffs.

10 MR. DELL'ANGELO: Michael Dell'Angelo, Your Honor.

11 So, yes, it is correct we propose 70 depositions.  
12 And I think the first observation that I'd make is that  
13 we're, by no means, suggesting that every one of those  
14 depositions would be seven hours. It's quite likely that a  
15 number of them would be shorter. So to look at this as 70  
16 seven hour depositions is I think not the appropriate context  
17 in which to look at it. And rather, it makes more sense to  
18 look at this in terms of the allegations at issue and the  
19 numbers of, you know, custodians and third parties that  
20 we're talking about.

21 So we're talking about a multifaceted scheme that,  
22 you know, we -- has a discovery period that extends about  
23 ten years. There are, as the Court observed, 31 former  
24 employees that we've identified in initial disclosures. As  
25 we heard a few moments ago, there are as many as 44 from

1 whom, based on varying extensive work we think, you know are  
2 custodians with relevant information.

3           There are at leave 80 third parties. There are  
4 1,000 fighters within -- I think it's 940 is the exact number  
5 within the bout class. We won't know, you know, how many  
6 more fall within the identity class that don't already fall  
7 within the bout class at least for some time.

8           But then there are also dozens of agents, managers  
9 for those 940 plus fighters; as well as dozens of sponsors,  
10 merchandisers, venues, broadcasters and distributors.

11           So, you know, when you look at the totality of both  
12 of the current and former employees of Zuffa, as well as the  
13 30 -- the third parties, we think that 70 is reasonable and  
14 proportional to the needs of the case; recognizing again that  
15 many of them probably will not be, you know, full seven hour  
16 depositions.

17           And I would observe, Your Honor, that we have  
18 issued several dozen I think now subpoenas to third parties.  
19 And I believe the number is correct, Your Honor, that Zuffa  
20 has issued 12. And those -- the 12 subpoenas, and certainly  
21 Mr. Cove will correct me if I'm wrong, that Zuffa has issued  
22 to date are for the same third parties that the plaintiffs  
23 have issued.

24           So I think what we'll find is that the parties are  
25 probably pursuing many of the same potential deponents, but

1 it's quite clear from the record that there are a number of  
2 them. And as we see the, you know, particularly in light of  
3 the sort of reduction of universe of custodians, I think  
4 it's all the more important that we have the opportunity to  
5 depose people that we need to depose to prove out the case  
6 and submit it -- limiting it to mere hours, particularly at  
7 150 is simply not proportional [unintelligible].

8 THE COURT: And who wishes to be heard on behalf  
9 of the defendants?

10 MR. WILLIAMS: Sure. Good afternoon, Your Honor.  
11 Colby Williams.

12 Again, Your Honor, this is not -- this is an  
13 antitrust case. It's obviously not your average piece of  
14 litigation that we have in this district. And I -- we  
15 understand and recognize that there's going to be more in  
16 terms of discovery that's required. We get that.

17 But by the same token, this is not like some of the  
18 cases that you see cited in the status report by the  
19 plaintiffs. This isn't the Visa antitrust litigation where  
20 there was 400 depositions or Walmart.

21 Zuffa, for all its success and in this company have  
22 grown quite a bit. This is not Apple. It's just not on that  
23 scale with some of these big corporations that are sued in  
24 these types of cases.

25 This, we're talking about a monopolization case.



1 We're talking about single firm conduct. And, quite frankly  
2 again, and the reason you see me standing up here a little  
3 bit is just to provide some historical perspective, which is  
4 that having represented the company for as long as I have,  
5 there really are very few decision makers in the company.  
6 And I recognize that they've talked about a lot of people  
7 outside the company that they want to take, but to suggest  
8 that you need to take 25 depositions of Zuffa employees,  
9 Your Honor, I don't know that I've met 25 Zuffa employees  
10 that are responsible for decision making that is alleged to  
11 be at issue in this case. So we think we've presented a  
12 reasonable proposal --

13 THE COURT: Decision making and people with  
14 knowledge of the things that the decision makers are doing  
15 are often different things.

16 MR. WILLIAMS: We understand that, Your Honor. And  
17 obviously I'm not saying that there are a number of  
18 depositions, that Zuffa should be limited to four. But  
19 something, you know, between -- you know, something less than  
20 certainly 25 I would suggest would get the plaintiffs more  
21 than sufficient information than what they're proposing they  
22 need to do in the way of depositions.

23 As for the other third parties, we have been  
24 issuing subpoenas that are to some of the same entities that  
25 plaintiffs have been. But, quite frankly, Your Honor, it's

1 out of an abundance of caution to make sure that we're  
2 getting the same documents that plaintiffs are getting. It's  
3 not necessarily because we think, you know, all of these  
4 outside players are going to be required to be deposed, and  
5 we think the number that we've submitted is sufficient.

6 THE COURT: Ever occur to both of you folks to  
7 jointly subpoena the documents at the same time to avoid that  
8 duplication? I know it runs an -- runs contrary to the blood  
9 of every litigator, but there are some things that might be  
10 in your mutual self interest there.

11 I'm going to limit the number of depositions at  
12 this point to 45 per side, and limit the number of Zuffa  
13 employee depositions to 15. Again, and exclude, for purposes  
14 of the 45 limitation, custodian of records depositions are  
15 more authentication type depositions that are a short duration.  
16 They're just needed in order to confirm documents, or  
17 authenticate documents.

18 So I'll leave the door open if it appears  
19 inadequate or if one side or the other is abusing the  
20 deposition process in any way. I can always take one of the  
21 many arrows out of my quiver. Okay.

22 The final issue that we have is with respect to the  
23 schedule in this case. The plaintiffs propose that I set a  
24 date for a pretrial conference and trial date. I'll just  
25 tell you, that is something that your trial judge will do.

1 And typically the way it works in this district, Judge  
2 Boulware is our newest judge so he is always free to adopt  
3 his own case management practices. But a trial date is  
4 assigned once the joint pretrial order is lodged with the  
5 Court after the close of discovery and after dispositive  
6 motions have been decided.

7 So I'm inclined to set a deadline for filing  
8 dispositive motions and -- so that you get on track to get in  
9 the queue to get a trial date. And then, of course, nothing  
10 prohibits you from asking for a pretrial conference under the  
11 rule before the trial judge in advance of the trial.

12 I don't know right now how far out he is from the  
13 time that you ask for a trial date until he schedules one.  
14 I'm getting -- the prior case is not this type of a case, but  
15 some of his settings right now are relatively short. But --  
16 okay, uncomfortably short for some litigants, so.

17 We'll go ahead and set the deadline for filing  
18 dispositive motions. And plaintiff's proposal seems  
19 reasonable to me, after the briefing is complete on the class  
20 certification motion, so there doesn't seem to be any reason  
21 why any existing summary judgment motions shouldn't be filed  
22 by February 22<sup>nd</sup>; and opposition briefs on March 23<sup>rd</sup>; with  
23 replies due April 20<sup>th</sup> of 2018. I can't believe I'm even  
24 saying that.

25 [Laughter].

1 THE COURT: So I'll go ahead and adopt that. And  
2 then as I said, as you get closer or as you get decisions and  
3 things change in the case, if the procedural posture of the  
4 case changes because it's been narrowed through motion  
5 practice or agreement then we can revisit these deadlines.  
6 But this is -- you have a lot of work to do but you need to  
7 get started, and this is a -- this is already going to be a  
8 three year case if these deadlines are not met, so.

9 Anything further on behalf of the plaintiffs?

10 MR. DELL'ANGELO: May I just ask one clarifying  
11 question, Your Honor?

12 THE COURT: Sure.

13 MR. DELL'ANGELO: Thank you. Otherwise I have  
14 nothing.

15 Just with respect to the Court's order regarding  
16 custodians, one thing I think that -- and though  
17 [unintelligible] suggested may have been a little unclear to  
18 some of us, is whether or not the Court was adopting Zuffa's  
19 proposal of 16 plus two custodians and then adding more or 16  
20 custodians plus six.

21 THE COURT: Sixteen plus six total.

22 MR. DELL'ANGELO: Thank you, Your Honor.

23 THE COURT: Okay.

24 MR. COVE: Your Honor, John Cove. I have two  
25 things.

1           One doesn't -- neither of them require any action  
2 by the Court right now. But I wanted to alert you that we  
3 have -- as counsel has said, we have issued subpoenas, both  
4 sides have issued subpoenas to some of Zuffa's competitors.  
5 In the initial discussions they have raised very serious  
6 concerns about in-house counsel having any access to their  
7 material, which I think are legitimate concerns. So we are  
8 going -- we've talked to the plaintiffs in general terms and  
9 we are going to propose an amendment to the protective order  
10 that will address the concerns about the third party --

11           THE COURT: Attorney's eyes only for --

12           MR. COVE: -- for third party materials. So we're  
13 going to meet and confer. I suspect we'll be able to reach  
14 an agreement on that.

15           One other clarification I wanted to make was at the  
16 beginning in Mr. Dell'Angelo's presentation, he explained  
17 that he had excluded some of the proposed custodian's time  
18 in the international aspects of Zuffa's business in making  
19 his proposal. We have, on many occasions in our meet and  
20 confers, told them that we contest their market -- the  
21 geographic market definition. We believe that that is -- is  
22 a worldwide geographic market. I don't think -- I'm not  
23 sure if it's in writing anyway, but I wanted to make sure  
24 that, before they choose their custodians, our position was  
25 on the record that we think it's a worldwide market that's a

1   disputed issue.

2               We think all the decisions that are important to a  
3   worldwide market, where bouts will be held, who was going to  
4   participate, how much they would get paid are made by the  
5   people in the United States, are the same decision makers  
6   that make decisions about bouts in the United States. But I  
7   want it to be absolutely clear that that's on the record  
8   before the custodians --

9               THE COURT: Before they make their elections.

10              MR. COVE: Exactly.

11              THE COURT: Okay.

12              MR. COVE: Thank you, Your Honor.

13              THE COURT: When do you folks believe it would be  
14   helpful to have another status and dispute resolution  
15   conference?

16              MR. COVE: Your Honor, I personally am tentatively  
17   scheduled for depositions in San Francisco the week of --  
18   well, starting on Wednesday, the 13<sup>th</sup> of January, and then  
19   into the following week. I would suggest the week after that,  
20   if that's convenient to everyone.

21              THE COURT: Mr. DelAnjo [sic] -- Dell'Angelo,  
22   excuse me.

23              MR. DELL'ANGELO: Thank you, Your Honor. I think  
24   that that date is fine. I'm not aware of any conflict at  
25   this time.

1 MR. COVE: Your Honor, I didn't consult with Mr.  
2 Williams or Mr. Hendrick before making that proposal, and I  
3 probably should have.

4 MR. WILLIAMS: That's fine with us, Your Honor.

5 MR. COVE: Is that alright?

6 THE COURT: The week of the 18<sup>th</sup>?

7 UNIDENTIFIED SPEAKER: No, I believe that's the  
8 25<sup>th</sup>.

9 THE COURT: The following the week. Okay. I  
10 didn't want to compress the time. People do things over this  
11 time of year and -- as much fun as it is to hold hearings on  
12 Christmas Eve, I'll try to --

13 Mr. Miller, what do we have that week?

14 THE CLERK: That would be the week beginning of  
15 Monday, January 25<sup>th</sup>. Am I on the same page?

16 THE COURT: Correct.

17 THE CLERK: We can schedule this matter for a  
18 continued status conference on Tuesday, January the 26<sup>th</sup>,  
19 2016, at 1:45 p.m. in this courtroom.

20 THE COURT: Does that work for you folks, 'cause  
21 what I'd do is just clear my afternoon so that I give you  
22 that time and squeeze all my other hearings in, in on the  
23 morning.

24 MR. COVE: Yeah. We really appreciate it, Your  
25 Honor. We understand how much work this is for the Court as

1 well, and I -- I think we all wanted to thank the Court for  
2 its time and effort on this.

3 THE COURT: That's my job.

4 MR. DELL'ANGELO: I share that view, Your Honor. I  
5 guess I'd just observe that with respect to the international  
6 aspect, I do acknowledge Mr. Cove, at least on one occasion  
7 as indicated that, you know, they view the relevant market as  
8 potentially being worldwide.

9 But, you know, I just want to make clear for the  
10 record that we had a different with respect to the  
11 discovery --

12 THE COURT: I know you're not biting into that, but  
13 he just wants you to know that so when you make your  
14 selection on your custodians you have that observation in  
15 mind.

16 MR. DELL'ANGELO: Well, I -- I appreciate that,  
17 Your Honor. And I guess all I wanted to make clear is that  
18 the selections that we made were with respect to a geographic  
19 market that's not greater than North America. So if -- we  
20 may be -- that calculus may change from our perspective and  
21 we may be coming back to talk to you about custodians to the  
22 extent we're dealing with international aspects.

23 THE COURT: I'm not going to anticipate a problem  
24 that hasn't arisen.

25 MR. DELL'ANGELO: I understand.



1 THE COURT: You've had your say on this and we'll  
2 see you back on January 26<sup>th</sup>.

3 MR. DELL'ANGELO: I appreciate that, Your Honor. I  
4 just didn't want to be silent on the issue.

5 [Laughter].

6 THE COURT: We're adjourned. Thank you, counsel.

7 ATTORNEYS: Thank you, Your Honor.

8 PROCEEDINGS CONCLUDED AT 3:02:39 P.M.

9 \* \* \* \* \*

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